

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VISA USA, INC.,

Plaintiff,

No. C 07-05585 JSW

v.

MARITZ INC,

Defendant.

**AMENDED ORDER DENYING
DEFENDANT'S ADMINISTRATIVE
REQUEST TO CONTINUE
HEARING AND EX PARTE
APPLICATION FOR DISCOVERY**

The Court has received the parties' briefs on the pending administrative request to continue the hearing on Visa U.S.A., Inc. ("Visa")'s pending motion to compel arbitration and *ex parte* application for discovery filed by Defendant Maritz, Inc. ("Maritz"). Having considered the arguments submitted by the parties, the administrative motion is DENIED. The moving papers do not constitute a proper motion for administrative relief under Civil Local Rule 7-11. The matters contained therein are not miscellaneous administrative matters. In addition, the Court finds the professed need for emergency attention to Maritz's *ex parte* request for discovery is entirely of Maritz's own making.

However, in order to resolve the merits of the issue regarding whether there is a need for discovery to determine the validity of the arbitration agreement, the Court SETS the issue for hearing on February 29, 2008 at 9:00 a.m.¹ Maritz shall file an opening brief not to exceed 15

¹ In response to the parties' joint letter seeking clarification dated January 18, 2008, the Court RESETS the hearing date and adopts the stipulation regarding the briefing schedule.

1 pages by January 25, 2008 setting out its legal argument regarding why and what discovery is
2 necessary to demonstrate that the agreement to arbitrate was fraudulently induced. The Court is
3 particularly concerned with whether there was any duty to exercise reasonable care to disclose
4 the matter(s) potentially in question. *See, e.g.*, Restatement 2d Torts, § 551. Visa shall file an
5 opposition not to exceed 15 pages by no later than February 4, 2008. Maritz may file a reply
6 not to exceed 10 pages by no later than February 11, 2008.

7 The hearing on the pending motions to stay arbitration and to compel arbitration are
8 CONTINUED to February 29, 2008 at 9:00 a.m. The reply brief on the motion to stay
9 arbitration shall still be filed by January 18, 2008. The opposition to the motion to compel
10 arbitration shall still be filed by January 18, 2008 and the reply in support of that motion shall
11 still be filed by January 25, 2008. The Court is mindful that this may entail some arguments in
12 the alternative.

13 **IT IS SO ORDERED.**

14
15 Dated: January 18, 2008



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE